

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/24/2020

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ALLSTATE INSURANCE COMPANY, :
ALLSTATE FIRE AND CASUALTY :
INSURANCE COMPANY, ALLSTATE :
INDEMNITY COMPANY, ALLSTATE :
NORTHBROOK INDEMNITY COMPANY, :
ALLSTATE PROPERTY AND CASUALTY :
INSURANCE COMPANY, and ALLSTATE :
VEHICLE AND PROPERTY INSURANCE :
COMPANY, :
:
Plaintiffs, :
:
-against- :
:
:
MEDAID RADIOLOGY, LLC, COLUMBUS :
IMAGING CENTER, LLC, REUVEN ALON- :
ALYOFF a/k/a ROB ALON, :
:
Defendants. :
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20-CV-1108 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS on September 11, 2019 Plaintiff filed a complaint in New York State Supreme Court (*see* Dkt. 9);

WHEREAS on February 7, 2020 Defendant filed a notice of removal, removing the case to the United States District Court for the Southern District of New York (Dkt. 5);

WHEREAS on March 5, 2020 Plaintiff filed a motion to remand the case to state court on the grounds that removal was untimely (Dkt. 9);

WHEREAS on March 20, 2020 Defendant filed an opposition to Plaintiff's motion to remand (Dkt. 14);

IT IS HEREBY ORDERED THAT: Plaintiff's motion is GRANTED. This case is REMANDED to state court. The notice of removal of a civil action must be filed "within 30

days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C. §1446(b)(1). Here, Plaintiffs served Defendants on September 30, 2019; Defendants did not file a notice of removal until February 7, 2020, more than 130 days later. *See* Dkt. 9, Exs. 3-7. Accordingly, Defendants’ notice of removal was untimely.

Defendants claim that “because the removal was based on diversity, the deadline to file the notice of removal was one year after commencement of the action, or September 10, 2020.” Def. Mem. of Law, Dkt. 14 at 5. Defendants misrepresent the law. Under 28 U.S.C. § 1446(c)(1), a case may not be removed on the basis of diversity jurisdiction “more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” That provision sets the outer limit for removal; it does not suggest that the deadline to file a notice of removal in a diversity jurisdiction case is one year after commencement of the action.

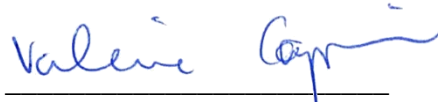
Although a defendant *may* file a notice of removal more than thirty days after service of the complaint, that is only permissible if the case was not initially removable, but later becomes removable. *See* 28 U.S.C. § 1446(b)(3) (“if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”). Defendants do not allege that the case stated by the initial pleading was not removable, nor can they. The complaint filed in state court alleges that Plaintiffs are citizens of Illinois, Defendants are citizens of New Jersey, and the amount in controversy is \$99,060, thereby satisfying the

requirements of diversity jurisdiction. *See* Dkt. 9, Ex. 3. Accordingly, because this case was removable upon service of the complaint, and Defendants failed to file a notice of removal for 130 days, their motion to remove the case to federal court is denied as untimely.

Accordingly, the motion for remand is GRANTED. The Clerk is respectfully requested to remand this case to New York Supreme Court and to close this case.

SO ORDERED.

Date: March 24, 2020
New York, New York



VALERIE CAPRONI
United States District Judge